

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Oemer Uensal et al.

Application No.: 10/530,226

Confirmation No.: 1035

Filed: August 26, 2005

Art Unit: 1796

For: PROTON-CONDUCTING POLYMER
MEMBRANE COMPRISING POLYAZOLE
BLENDS AND ITS USE IN FUEL CELLS

Examiner: H. S. Hu

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the restriction requirement set forth in the Office Action mailed September 24, 2008, applicant hereby provisionally elects Group I, claims 1-24 for continued examination, with traverse.

The Examiner has required restriction between one of the following inventions:

Group I, claims 1-24, drawn to a proton-conducting polymer membrane, which comprises polyazole blends and its obtainable by a four-step process as specified. This is a product by process claim.

Group II, claims 25-26, drawn to an electrode provided with a proton-conducting polymer coating, which comprises polyazole blends and is obtained by a four-step process as specified. This is a product by process claim.

Group III, claims 27-31, drawn to a membrane-electrode unit (claims 27-28 and 30-31) and a fuel cell (claim 29). The membrane-electrode unit comprises at least one electrode and at least one membrane as claimed in Group I. This is a product by process claim.

Applicants respectfully traverse the Restriction requirement because the U.S. Patent and Trademark Office has not carried forward its burden of proof to establish distinctness.

In particular, MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

The claims of the present invention would appear to be part of an overlapping search area. Accordingly, Applicants respectfully traverse the outstanding Election requirement on the grounds that a search and examination of the entire application would not place a *serious* burden on the Examiner.

Furthermore, this is a PCT application and the PCT Examiner determined that the application had unity and none of the claims were restricted out. Since this application was filed under 35 USC 371 the rules for unity of invention apply. Therefore, the applicant respectfully requests that this restriction requirement be withdrawn.

The Examiner also stated “that two independent claims are marked with an underline and are combined with its dependent claims.” The applicant does understand this remark. Enclosed are the pending claims that were filed in the last (second) preliminary amendment. These claims were downloaded from PAIR. The applicant can not find any dependent claims combined with independent claims.

A one month extension has been paid. Applicant believes no additional fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 15588-00009-US from which the undersigned is authorized to draw.

Dated: November 19, 2008

Respectfully submitted,

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